



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/818,729	03/27/2001	Daniel Abeshouse	046700-5024	1345

28977 7590 03/11/2005

MORGAN, LEWIS & BOCKIUS LLP
1701 MARKET STREET
PHILADELPHIA, PA 19103-2921

EXAMINER

FULTS, RICHARD C

ART UNIT	PAPER NUMBER
----------	--------------

3628

DATE MAILED: 03/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/818,729

Applicant(s)

ABESHOUSE ET AL.

Examiner

Richard Fults

Art Unit

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claims 1-40 are rejected under USC 101 as the claimed invention lacks patentable utility. This examiner has participated in hundreds of on-line auctions on e-Bay and has won over 220 of them, often "sniping" (bidding at the last possible moment before the closing time). On many occasions these snipe bids were entered with about 15 to 20 or so seconds to go before closing (e-Bay has for many years since the late 1990s operated a minute and seconds-to-go digital clock on each auction item page if there are only a few minutes to go in that auction), only to discover with about 5 to 10 seconds to go (it takes about 10 seconds or more to enter the bid and then check the bid page) that another bidder had entered an undisclosed higher price well beforehand. In order to win the auction, that in turn required yet another bid attempt which always ended in failure because 5 to 10 seconds was not enough time to place an effective bid because of the many separate typing steps required. This invention proposes adding a possible a few micro-seconds to the bidding process to account for the message travel time. If 5 to 10 seconds are not enough time to successfully enter a bid, a few micro-seconds more are not going to make any difference. If one is serious about winning an auction up to a particular price, the only way to ensure winning at or below that price is to enter that highest price well in advance of the closing time, **which closing time is the same for all bidders**. On e-Bay that highest bid price will only become operational if bids by others require your own bid to be raised from the lower starting bid, otherwise it is sometimes possible to win at the low starting price even if your hidden bid is twice that level or more, provided no one else is bidding; or to win in any event if no one else bids as high as your highest price bid.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rackson et al (US 6,415,270 B1) (hereinafter Rackson).

Rackson discloses (see at least columns 1-28) all the methods and systems described in claims 1-40, including determining a message travel time between a participant processor and an auction processor, establishing a sponsor auction time at the auction processor, calculating a bidder auction time by adding the message travel time to the auction processor time, setting a participant processor clock to the bidder auction time, and accepting a bid at the auction processor only if the bid was sent prior to a predetermined end of the bidding time. Rackson does not teach the addition of a message travel time to the end of the auction.

However, this examiner has participated in hundreds of on-line auctions on e-Bay and has won over 220 of them, often "sniping" (bidding at the last possible moment before the closing time). On many occasions these snipe bids were entered with about 15 to 20 or so seconds to go before closing (e-Bay has for many years since the late 1990s operated a minute and seconds-to-go digital clock on each auction item page if there are only a few minutes to go in that auction), only to discover with about 5 to 10 seconds to go (it takes about 10 seconds or more to enter the bid and then check the bid page) that another bidder had entered an undisclosed higher price well beforehand.

Art Unit: 3628

In order to win the auction, that in turn required yet another bid attempt which always ended in failure because 5 to 10 seconds was not enough time to place an effective bid because of the many separate typing steps required. This invention proposes adding a possible a few micro-seconds to the bidding process to account for the message travel time. If 5 to 10 seconds are not enough time to successfully enter a bid, a few micro-seconds more are not going to make any difference in the outcome. If one is serious about winning an auction up to a particular price, the only way to ensure winning at or below that price is to enter that highest price well in advance of the closing time, **which closing time is clearly posted, clocked in real time, and is the same for all bidders**. On e-Bay that highest bid price will only become operational if bids by others require your own bid to be raised from the lower starting bid, otherwise it is sometimes possible to win at the low starting price even if your hidden bid is twice that level or more, provided no one else is bidding; or to win in any event if no one else bids as high as your highest price bid. Because of these facts it would have been obvious to one skilled in the art at the time of the invention that this invention would lack patentable utility for all the reasons cited.


3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard Fults whose telephone number is 703-305-5416. The examiner can normally be reached on weekdays from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung Sough, can be reached on (703)-305-0505. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9326 before final and 703-872-9327 after final.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.


RCF

3/4/2005


4 3628